

NOT RECOMMENDED FOR PUBLICATION

No. 23-1211

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

May 3, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.) ON APPEAL FROM THE UNITED
ROBERT M. BROWN II,) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
Defendant-Appellant.) MICHIGAN
)
)
)

O R D E R

Before: BATCHELDER, WHITE, and STRANCH, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

Robert M. Brown II was convicted in 2019 of conspiracy and other offenses. This court affirmed his convictions and sentence on direct appeal. *United States v. Bailey*, Nos. 19-2280/2281/2354/20-1235, 2022 WL 2444930 (6th Cir. July 5, 2022). The Supreme Court denied a petition for a writ of certiorari. *Brown v. United States*, 143 S. Ct. 392 (2022).

In November 2022, Brown filed a motion to appoint counsel so that he could pursue a 28 U.S.C. § 2255 motion to vacate. The district court denied the motion.

In January 2023, Brown filed a second motion to appoint counsel so that he could prepare a § 2255 motion to vacate. Additionally, he requested that the statute of limitations for the motion to vacate be stayed pending the resolution of the trial of one of Brown's co-conspirators. On

No. 23-1211

- 2 -

February 15, 2023, the district court entered an order denying the second motion for counsel and denying Brown's request for a stay. On March 6, 2023, Brown filed a notice of appeal from the district court's February 15, 2023, order.

Generally, this court's jurisdiction is limited to final decisions of district courts, 28 U.S.C. § 1291, and to interlocutory orders that are "sufficiently important and collateral to the merits that they should 'nonetheless be treated as final,'" *Will v. Hallock*, 546 U.S. 345, 347 (2006) (quoting *Dig. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1992)). A final order is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945); *see United States v. Martirossian*, 917 F.3d 883, 886 (6th Cir. 2019). An order is appealable under the collateral order doctrine if it "[1] conclusively determine[s] the disputed question, [2] resolve[s] an important issue completely separate from the merits of the action, and [3] [is] effectively unreviewable on appeal from a final judgment." *Will*, 546 U.S. at 349 (citing *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)).

This court lacks jurisdiction over this appeal because there has been no final appealable decision by the district court. In fact, there is no action currently pending before the district court. And neither the denial of a motion for the appointment of counsel or the denial of a motion to stay the proceedings is immediately appealable as a collateral order. *See Tyler v. United States*, 785 F.2d 310 (6th Cir. 1986) (unpublished decision) (no jurisdiction to review order denying appointment of counsel to assist in preparing a § 2255 motion); *see also United States v. Crayton*, 689 F. App'x 357, 358 (5th Cir. 2017) (no jurisdiction to review order denying extension of time to file a § 2255 motion); *United States v. Green*, 656 F. App'x 856, 857–58 (9th Cir. 2016) (no jurisdiction to review order denying extension of time to file a § 2255 motion); *United States v. Sakyi*, 289 F. App'x 661, 661 (4th Cir. 2008) (no jurisdiction to review order denying motion for appointment of counsel and motion for extension of time to file a § 2255 motion).

No. 23-1211

- 3 -

Accordingly, the appeal is **DISMISSED** for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 05/03/2023.

Case Name: USA v. Robert Brown, II

Case Number: 23-1211

Docket Text:

ORDER filed: The appeal is DISMISSED for lack of jurisdiction, decision not for publication, No mandate to issue. Alice M. Batchelder, Circuit Judge; Helene N. White, Circuit Judge and Jane Branstetter Stranch, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Robert M. Brown II
F.C.I. Hazelton
P.O. Box 5000
Bruceton Mills, WV 26525

A copy of this notice will be issued to:

Ms. Kinikia D. Essix
Mr. Andrew Goetz